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Louisiana Court Holds That PTO Days Are Considered Wages Under State Law

By Noel P. Tripp on December 23, 2013

Last month, an intermediate appeals court in Louisiana held that accrued and unused paid days off constituted earned wages for which compensation was due to a former employee upon separation under the Louisiana Wage Payment Act (“LWPA”). *Davis v. St. Francisville Country Manor, L.L.C.*, 2013 La. App. LEXIS 2241, 1-2 (La.App. 1 Cir. Nov. 1, 2013).

In *Davis*, the plaintiff resigned from her employment with the defendant and then brought suit demanding she be paid for the balance of her accrued but unused paid days off pursuant to the state law, specifically the LWPA’s requirement of prompt payment of earned wages upon an employee’s discharge or resignation. The statute provides that vacation pay becomes “earned wages” when an employee is “deemed eligible for and has accrued the right to take vacation time with pay” and “has not taken or been compensated for the vacation time as of the date of the discharge or resignation.”

The Company argued that pursuant to its policy, paid days off did not constitute “vacation pay” because the accumulated paid days off are granted to employees, “in the nature of a mere gratuity”, and, thus, do not constitute “vacation” for purposes of the law. The Company argued that the language of its paid days off policy expressly provided that such time was a “mere gratuity.” The Louisiana First Circuit Court of Appeals disagreed, holding that the “accrual” of the right to be compensated while not at work, no matter how the employer labels it, is the triggering event that renders the law applicable. Furthermore, Company policy stated that employees were “entitled” to paid days off, which “accrue” at a specified rate. Thus, the Company policy did not expressly state that paid days off are a gift, a donation, or otherwise unearned. “[I]n the absence of a clear, written policy establishing that vacation time granted by an employer is nothing more than a mere gratuity and not to be considered an amount due or a wage,” wrote the court, “accrued but unused vacation time is a vested right for which an employee must be compensated or paid upon discharge or resignation.”

“In light of the specific guidance the *Davis* decision contains regarding the implications of the vacation and/or paid time off policy language for employee rights under the Wage Payment Act, Louisiana employers certainly should review and consider revising their paid time off policies accordingly,” observed New Orleans based Jackson Lewis Shareholder, René E. Thorne. “The intent that such time be a ‘mere gratuity’ must be emphatically clear without any express or implied language that the gratuity is in any way earned or accrued.”

Whether termed vacation, sick, holiday or other form of “paid time off” (often shorthanded as “PTO”), all employers must analyze their PTO policies under state law to prevent unintended consequences thereof. Further, employer may wish to consider aggressive strategies to avoid payout obligations.

About

Paul DeCamp is a Partner in the Washington, D.C. Region office of Jackson Lewis P.C. and leader of the firm’s Wage and Hour Practice Group. He is a nationally recognized expert in wage and hour law. He joined the firm... More...

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